IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LODGING NO.3150 OF 2004

1.Hyderabad(Sind)National Collegiate)
Board, C/o.K.C. College, Dinshaw)
Waccha Road,Churchgate,Mumbai-400 020)

2.Thadomal Shahani Engineering College)
32nd Road, TPS-III, Bandra (West),)
Mumbai-400 050.)

3.Prof. Kranti Kumar, Principal of)
Thadomal Shahani Engineering College)
32nd Road, TPS-III, Bandra (West))
Mumbai-400 050.)

4.Prof.J.K.Bhambhani, Rector and))
Secretary,Hyderabad (Sind))
National Collegiate Board, K.C.College)
Dinshaw Waccha Road, Mumbai-400 020).PETITIONERS

Versus

1. Smt.Nisha Rajput, B/10, Mangalam)
Thakur Complex, Kandivali (East),)
Mumbai-400 101.)

2. University of Mumbai, University)
Road, Mumbai-400 023.)

3. Presiding Officer, University &)
College Tribunal, Mumbai.).RESPONDENTS

Mr. C.U.Singh with Mr. J.S.Chandnani, for the Petitioners

Mr. N.M. Ganguli with Ms. K.G. Poojari for Respondent No.1.

CORAM: F.I. REBELLO J.

DATE : 10th December, 2004

ORAL JUDGMENT:

. Rule. Heard forthwith.

2. By the present petition the petitioners have impugned the judgment dated 14th October, 2004 passed by the Mumbai University College Tribunal. The petitioners pursuant to a Departmental Enquiry conducted by them by order dated 13th March, 1999 passed a Resolution that in view of the established and proved misconducts Smt. Nisha K. Rajput, the Respondent No.1 be awarded the punishment of reduction to the lower time scale pay of Rs.950-20-1150-EB-25-1500 and to the grade of Junior Clerk as provided in Rule 43(1)(b)(ii) of the Standard Code Rules, 1984. It was further directed that this reduction to Lower Grade of Junior Clerk shall be in operation for a period of five years from the date of the order and during this period she will not earn any annual increments and be restored to the post of Senior Clerk after expiry of five years

period of punishment, on the condition that her work and conduct will be found satisfactory during this period of five years and if she is found satisfactory during this period of five years and if she is restored to the post of Senior Clerk, she will be placed Junior most in the seniority of Senior Clerks as on the date of such restoration. Some consequential directions were also issued.

. The Respondent No.1 aggrieved preferred an Appeal before the College Tribunal. That Appeal came to be allowed and the Petitioners were directed to reinstate the Respondent No.1 to the original post of Senior Clerk and to pay the arrears of salary from the date of her reversion till the date of reinstatement. That order was challenged by the Petitioners in Writ Petition No.2210 of 2000, which came to be disposed of by judgment and order dated July 8, 2003. One of the contentions raised before the learned single Judge was that the Tribunal erred in holding that the Rector and Secretary of the petitioner No.1 was not the Competent Authority to hold the Departmental Enquiry and to take decision regarding imposition of penalty and as such the order imposing punishment of reversion could not have been passed. The learned Judge after considering the said contention was pleased to hold that the Rector and Secretary being appointing authority could not have

imposed penalty as imposed and, therefore, set aside the finding of the Tribunal. The learned Judge then noted the contention in so far as the charge of misconduct is concerned. The learned Judge found that the learned Tribunal had not analysed the entire evidence in proper perspective before arriving at a finding that the testimony of the Principal could not be believed and also the evidence of witness Dwivedi and consequently set aside the order. While disposing of the Petition the learned Judge also noted a disturbing factor, namely that employer because the employee had remained absent for two or three days in a week, in anticipation had marked the employee absent for the remaining days of the week. The learned Judge observed that the employer is not entitled to make any remark marking such an employee as absent for such remaining days of the week in the absence of any rule and, therefore, remanded the matter back to the Tribunal with a direction to reassess the evidence in accordance with the provisions of law and to arrive at correct findings.

3. On remand the learned Tribunal by its order dated 14th October, 2004 after considering the contentions as advanced by the parties was pleased to hold as under:-

(i) The initiation of disciplinary enquiry by

respondent No.4 against the appellant is vitiated on account of want of authority.

(ii) The impugned order of reversion of the Appellant stands vitiated for want of authority and also further stands vitiated on the ground of denial of opportunity to the appellant to plead against the findings of the enquiry officer.

(iii) On reassessment of the evidence on record, the charge of misconduct is not proved.

(iv) It is improper and illegal to impose more than one penalty on the Appellant for the same charge. Consequently the learned Tribunal directed the Respondent Nos.1 to 4 to reinstate the appellant on the original post of Senior Clerk and to pay the difference/arrears of salary from the date of reversion till the date of reinstatement. It is this order which i the subject matter of the present petition.

4. At the hearing of this petition on behalf of the petitioners learned Counsel contends that considering the findings recorded in Writ Petition NO.2210 of 2000 the learned Tribunal acted without jurisdiction in holding that the authority who had punished had no authority. It is pointed out that

the learned Single Judge had considered that issue and had recorded a clear finding that the Rector and Secretary had the power to impose the punishment and as such the learned Tribunal could not have ignored the said finding. It is then submitted that the finding by the learned Tribunal that the enquiry was vitiated on the ground that no opportunity was given to the petitioner before the Disciplinary Authority is contrary to the record. It is pointed out that even if the opportunity was not given at the highest the enquiry had to be restarted from that stage and for that purpose reliance is placed on the judgment in the case of **N.T.C. (WBAB & O) Ltd. and Anr. v. Anjan K. Saha, JT 2004 (9) SC 109,**relying on its earlier judgment in **Managing Director, ECIL, Hyderabad & Ors. V. B. Karunakar & Ors., JT 1993 (6) SC 1.** The Apex Court held that the enquiry should be started de novo from the stage of opportunity. It is, therefore, submitted that the said finding is also contrary to law. Even otherwise it is submitted that the petitioner proceeded to impose punishment based on the Rules and the procedure as it existed in Maharashtra Non-Agricultural Universities & Affiliated Colleges Standard Code Rules, 1984. It is, therefore, submitted that the finding on that count also is vitiated being without jurisdiction. It is then submitted that the Appellate Authority though in

Appeal could consider the evidence afresh, had to apply the standards of an Appellate Authority in reassessing the evidence. In the instant case considering the record, the findings that the Respondent No.1 is not guilty of the charges levelled is contrary to record and consequently perverse and on that count the impugned order suffers from error of law apparent on the face of the record and consequently the order is liable to be set aside. Lastly it is submitted that considering the charge proved in respect of the misconduct alleged and the punishment which would be imposed for a major misconduct under Rule 43 it could not be said that the petitioners have imposed a double punishment and on that count also the impugned order is liable to be set aside.

. On the other hand on behalf of the respondent No.1 her learned Counsel contends that the Tribunal on consideration of the material has recorded a finding of fact that the respondent No.1 was not guilty of the charges levelled. This being a pure finding of fact unless perverse or on non-consideration of relevant material produced before the Tribunal, the same ought not to be interfered with by this Court in the exercise of its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. It is then

submitted that the terms of remand of this Court directed the Appellate Authority to reassess the evidence and in these circumstances it was open to the Appellate Authority to reassess the evidence, apart from the fact that it was within the jurisdiction of the Appellate Authority to reassess the evidence. The contention, therefore, by the petitioners that the evidence could not be considered afresh is not justified and devoid of merits. It is then submitted that no documentary evidence was produced before the learned Appellate Authority to show that the charges were proved to impose punishment. In fact in terms of Rule 27(a) of the Rules of the petitioners it was within the jurisdiction of the Tribunal to have considered that aspect. It is submitted that considering the material and the finding recorded by the Tribunal this Court ought not to interfere with the discretion exercised by the Appellate Authority.

5. Having heard the learned Counsel the first question that had to be answered is whether it was open to the learned Tribunal to record a fresh finding on the ground that the Authority which initiated Disciplinary proceedings or imposed the punishment had no authority to do so. It is no doubt true that Rule 27 of the Hyderabad (Sind) National Collegiate Board sets out that subject to the Rules,

Bye-laws and Regulations and to such directions as the Board or the Managing Committee may have from time to time issue, the Rector, the Secretary and the Directors of Education may exercise the power to appoint, suspend, remove or dismiss any member of the clerical or inferior staff. Under Appendix -I specific power is conferred on the Rector which was to regulate the appointments. In other words the power to dismiss by the Rector had not been conferred on the Director. Even if that be so and if no resolution was passed yet it was not within the jurisdiction of the Tribunal after this Court had recorded a finding in Writ Petition NO.2210 of 2000 that the Rector, Secretary had the authority and to go beyond the said order and pass a contrary order. The criticism by the petitioners on that count is, therefore, justified. Even otherwise the resolution imposing punishment which is annexed to the petition would demonstrate that the decision to dismiss the respondent No.1 was not taken by the Directors, but by the managing committee in its meeting held on 26th February, 1999. In terms of Rule 27 it is the managing committee which is competent authority under the said Rules and, therefore, the order was passed by the Competent Authority. The finding, therefore, by the learned Tribunal on that count will have to be set aside.

6. That takes us to the next ground of challenge namely whether the learned Tribunal could not have held that the enquiry stood vitiated on the ground that before the Disciplinary Authority decided to impose the punishment, the findings of the Enquiry Officer were approved without giving an opportunity to the employee of giving his say on the findings recorded by the Enquiry Officer. Considering the law laid down by the Apex Court in the case of N.T.C. (WBAB & O) (supra) it would be clear that even if such an opportunity was not given at the highest the order could be set aside and the matter remanded back to the stage of giving an opportunity. The order itself, therefore, could not have been set aside on that count without giving an opportunity to the petitioners. The matter ought to have been remanded. Contention of the petitioners on that count will have to be upheld.

7. The other legal submission is that the petitioners could not have imposed double punishment. The punishment in terms of the Standard Cord was imposed in terms of Rule 43(b)(ii) which reads as under:-

> "43(1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and

sufficient reasons and as hereinafter provided, be imposed on the University or the College employee guilty of misconduct:-

(a).....

(b) Major penalties:-

(i).....

(ii) reduction to a lower time-scale of pay, grade, post or services which shall, ordinarily be a bar to the promotion of the employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding condition of restoration of the time-scale of pay, grade, post or service from which he was reduced, and his seniority and pay on such restoration."

A perusal of the said resolution would nowhere indicate that there is any double punishment. The punishment imposed is to the grade of Junior clerk from Senior Clerk which carries the pay scale 950-1500. This would be in conformity with Rule 43(b)(ii). In my opinion, therefore, the learned Tribunal, therefore, was not right in recording that there has been imposition of more than one penalty on the respondent No.1.

8. That brings us to the last issue whether there is any perversity in the finding recorded by the learned Tribunal that the petitioners were unable, on the material on record, to prove the misconduct as was found proved at the enquiry. Much criticism is sought to be made on the aspect of reconsideration of the evidence. As noted earlier the Tribunal apart from the fact that it was Appellate Authority and as such was bound to reassess the evidence, in terms of the order of remand had to reappreciate the evidence de novo. The exercise, therefore, by the Tribunal in appreciating the evidence was within its jurisdictional powers as also in terms of the order of remand of this Court. There is no dispute that an incident did take place on 5th June, 1997, which involved the Principal of the College and the Respondent No.1 herein. It is an admitted fact on record that during the incident there was another witness who was present namely the security guard, who has been examined on behalf of the petitioner management. What emerges from the said evidence is that suggestion was put to the Principal that he got up from his seat and gestured as if to assault the Respondent No.1 in the cabin. This of course was denied by the Principal. A similar suggestion was put to Ramlal which is question No.26 which was also denied by the said witness. In the evidence of Respondent No.1 herself

what the respondent No.1 has stated is that "At that time the Principal got up from his seat and gestured as if to assault me and told me to get out. The Principal repeatedly said 'you are asking me about the rule. I was totally confused at this. I told the Principal as to how he could raise his hand against a lady. I further told him that if he even touches me with his hand I would break it..." "After I came out of the Principal's cabin, after about two or three minutes, Watchman, Dwivedi who was present at the time of this incident came out of the cabin." In so far as the version by Respondent NO.1 whether the Principal gestured as if to assault has not specifically challenged or even suggested that it was not correct version of the incident. From this what appears is firstly that the incident had taken place. The only explanation given by the respondent No.1 for using the words is on account of the gesture of the Principal as if to assault the respondent No.1. The learned Tribunal has in an in depth analysis, analysed the evidence led on behalf of both the parties and thereafter have come to the conclusion that on the assessment of evidence that an incident took place between the respondent No.1 and the Principal Kranti Kumar. However, held that on consideration of the evidence of the management witnesses it did not appear that the incident took place as in the manner stated. The learned Tribunal,

therefore, noted that the Principal in the course of exchange of hot words made certain gesture at the respondent No.1 which appears to have caused an impression or apprehension in her mind that the Principal wanted to assault her.The learned Tribunal noted that the Enquiry Officer had not at all considered this aspect of the matter. The learned Tribunal noted as to why the case of the management could not be accepted. Really speaking, therefore, these are findings of fact with which this Court really ought not to interfere in the exercise of its extra ordinary jurisdiction. However, there is one aspect of the matter, which to my mind needs consideration. It is that the respondent NO.1 who had gone to the Cabin of the Principal. Even assuming that it was her impression that the gesture of the Principal was as if to assault, it was not becoming of an employee to threaten the Principal that she would break his hands. There has to be some respect for the post to which the Principal was occupying. Considering that to my mind though as stated earlier it was really not a case to interfere with the finding of fact recorded by the Tribunal, considering this aspect atleast a minor punishment ought to have been imposed on the respondent No.1 herein.

10. In that light of the matter in my opinion the

ends of justice would be met considering the material on record the findings by the learned Tribunal and the circumstances in which the incident occurred, if a penalty of censure is imposed on the Respondent No.1. In the light of that the impugned order of the Tribunal is partly modified to the extent that instead of total exoneration the penalty of censure is imposed on the Respondent No.1. Rule made partly absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)